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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re J.A., A Person Coming
Under the Juvenile Court Law.

B304452

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Los Angeles County
Super. Ct. No.
19CCJP07390A

Plaintiff and Respondent,

v.

S.A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County. Marguerite D. Downing, Judge. Affirmed.

Jacques Alexander Love, under appointment by the
Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Acting
Assistant County Counsel, and Stephanie Jo Reagan, Principal
Deputy County Counsel, for Plaintiff and Respondent.

Father appeals a disposition order removing his 14-year-old son J.A. from his physical custody. The evidence established J.A.'s unsupervised contact with mother posed a substantial risk to the child's physical health and emotional well-being. And, father admits he violated a juvenile court custody order numerous times by allowing mother to have unmonitored contact with J.A. Nevertheless, father contends the evidence was insufficient to find he would continue to violate the order if the juvenile court placed J.A. in his custody. But the evidence showed father did violate the order, even after the child welfare agency began monitoring the family following an incident in which mother threatened J.A. with a sledgehammer. This, together with other evidence showing father did not appreciate the risk posed by mother's unmonitored contact with J.A., was sufficient to support the court's finding that placing J.A. with father would pose a substantial risk to the child's health and emotional well-being. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the facts in the light most favorable to the juvenile court's findings, resolving all conflicts and drawing all reasonable inferences to uphold the court's order, if possible. (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

In 2012, a juvenile court in Riverside County declared J.A. a dependent child, finding father had a history of engaging in domestic violence, mother had a history of substance abuse, and both parents failed to protect J.A. from the risk of harm posed by this endangering conduct. In September 2012, the court transferred J.A.'s dependency case to the juvenile court in Los Angeles County. In February 2013, the juvenile court

terminated jurisdiction with a custody order granting father sole legal and physical custody. The order restricted mother's visitation rights to supervised visits with J.A. one time per week in a neutral setting and prohibited father from monitoring mother's visits.

In September 2019, the Los Angeles County Department of Children and Family Services (the Department) received a report that J.A. was experiencing anxiety and having difficulty breathing.¹ J.A. said mother had bipolar disorder and she was not compliant with her medication. Mother had come to J.A.'s house a week earlier and had smashed things with a sledgehammer. She threatened to hit J.A. and to burn down the house. Father was not home, but he told J.A. he would get a restraining order to prevent further incidents.

Six days later mother returned to the home. J.A. told her to leave and warned her he would call father or law enforcement. Mother threatened to make false accusations against father if J.A. reported her. J.A. said mother's outbursts caused him to have panic attacks and he feared mother would burn the house down.

J.A. said mother normally had supervised visits with him in the home, which his adult sibling monitored. But mother also

¹ From April 2015 to May 2017, the Department received at least five referrals about J.A.'s welfare. The referrals alleged father sold methamphetamine, mother had returned to the family home and threatened to kill J.A., father had left J.A. home alone at night without food, the parents argued and father had threatened to assault mother, and mother had broken into the home and refused to leave. After investigations, the Department determined each of the referrals was inconclusive for abuse.

randomly came to the house about two or three times a week. J.A. tried to avoid mother because he had severe anxiety attacks when she came around. He said mother and father could be congenial one moment and in the next moment mother would be “freaking out over nothing.” J.A. denied fearing either parent.

Father said mother was homeless and she had bipolar disorder, disassociation, and some other mental health issues. She had not been taking her medication. He admitted mother randomly came to the house because he had not established a set schedule for visitation. Father said J.A. had been experiencing anxiety since the sledgehammer incident. He obtained a temporary restraining order against mother to protect J.A., but he had failed to serve mother with the order.

As the social worker was preparing to leave father’s home, a car pulled up to the driveway. Father claimed it was J.A.’s adult brother, and yelled, “[W]hat’s up, I got [Child Protective Services] in here.” The car drove off. The social worker observed it was mother in the car.

Mother said she had a history of domestic violence with father. She also had mental health issues. She was diagnosed with bipolar disorder and manic depression in 2010. She was prescribed medication, but she did not take it.

Mother reported she spent the night at father’s home the day before the sledgehammer incident. She had stayed in the home with father and J.A. before when father was injured in a bicycle accident. Regarding the incident, mother said she was upset because father stole her scooter to go gambling that day. She denied threatening J.A. with a sledgehammer.

Before her interview concluded, mother received a call from J.A.’s school. She told the social worker she had to go because

J.A. needed her. The next day the social worker contacted J.A.'s school and confirmed father had given the school verbal permission to release J.A. to mother.

In October 2019, the social worker spoke with J.A. again. He reported that mother continued to come around the home. J.A.'s older brother, who usually supervised mother's visits, was not always there, and J.A. was frequently forced to tell mother she needed to leave. Father still had not served mother with the restraining order.

On October 21, 2019, the social worker spoke with father and expressed the Department's concerns about father's failure to serve mother with the restraining order and his decision to allow mother to pick up J.A. from school. Father denied that he had given the school permission to release J.A. to mother. The social worker contacted J.A.'s school again and confirmed father had given the school permission to release J.A. to mother's custody. The Department left at least three voicemail messages for father between October 24 and November 8, 2019. As of November 13, 2019, father had not returned any of the Department's calls.

On November 15, 2019, the Department filed a petition to declare J.A. a dependent child under Welfare and Institutions Code section 300, subdivisions (a), (b), and (c), based on mother's violent conduct and father's violation of the juvenile court custody order and failure to protect J.A.² The Department also requested a removal order to have J.A. placed with his paternal aunt, Stephanie Z.

As part of its detention report, the Department attached father's request for a domestic violence restraining order, filed

² Statutory references are to the Welfare and Institutions Code.

on September 4, 2019. The request sought a “Move-Out Order” against mother and described an incident, “this morning,” when mother “threw a glass cup at [J.A.],” nearly missing “his head.” Father alleged mother had also threatened to harm J.A. with a “sledgehammer.” He declared: Mother “has been getting more extreme day by day. She has been very violent[,] constantly throw[ing] things[,] breaking thing[s,] and making violent threats.”

The juvenile court ordered J.A. to be detained and placed in the custody of his aunt so he could continue to attend his current school.

The Department’s investigator spoke with the paternal aunt, Stephanie Z., about the petition’s allegations. Ms. Z. said mother and father “go back and forth with each other.” She described their relationship as “toxic.” She believed mother and father were “codependent” and in a “love/hate relationship.” Father had said he wished to leave mother, but always returned to her. Ms. Z. also said father failed to set boundaries with mother. Even when father made mother leave the house, she always returned.

Father denied having physical fights with mother, but he admitted they had loud altercations and he yelled when he was angry. Despite J.A.’s report, father did not believe mother had used a sledgehammer to break things. He denied that he allowed mother to live in the house, but admitted she “came over often” to take care of him when he had a bad bicycle accident. Although he acknowledged mother’s mental health condition and her refusal to take medication, father still believed mother was capable of caring for J.A.

In December 2019, a social worker met with father and provided him with a list of referrals for services, including individual therapy and parenting classes. In January 2020, father told the social worker he was scheduled to begin parenting classes later that month and he intended to enroll in individual counseling as well. Regarding the restraining order, father said he requested a continuance of the hearing to obtain a permanent order after mother failed to appear at the December 30, 2019 hearing.

On January 7, 2020, the juvenile court held a combined jurisdiction and disposition hearing. Mother pled no contest to the dependency petition and father offered no evidence to rebut the accounts in the Department's reports. The court adjudicated J.A. a dependent, finding, among other things, that father violated the juvenile court custody order and failed to protect J.A. by allowing mother to have unsupervised access to the child.

Because the Department's reports raised suspicions about father's possible drug use, the minor's counsel asked the court to continue the disposition hearing to allow father to be drug tested before ruling on J.A.'s placement. The court continued the hearing for three weeks and ordered weekly drug testing for father. As for mother, the court found returning J.A. to mother's custody would pose a substantial risk of harm to the child.

Father submitted to two drug tests in January 2020. Both tests were positive for marijuana and negative for all other substances.

On January 29, 2020, the juvenile court held the continued disposition hearing. Apart from the Department's reports, no additional evidence was offered. J.A.'s counsel argued J.A. should return to father's custody with family preservation

services in place. The Department continued to recommend removal.

The juvenile court ordered removal, finding placement with father would pose a substantial danger to J.A.'s physical health and emotional well-being. The court emphasized that mother's history of violent behavior posed a persistent danger to J.A. and, for that reason, another juvenile court had imposed a custody order requiring father to ensure mother had only supervised contact with the child. The court found father violated that order on numerous occasions, including by authorizing J.A.'s school to release the child to mother without supervision. For his part, father had failed to rebut the Department's showing that he was unlikely to follow the court's orders if J.A. were released to his custody. The court ordered reunification services for father and granted him unmonitored day visits with J.A.

Father filed a timely notice of appeal from the disposition order.

DISCUSSION

Father does not challenge the order declaring J.A. a dependent child under section 300, subdivision (b). His appeal concerns only the disposition order removing J.A. from his physical custody. Father maintains there was insufficient evidence to prove J.A. would be at substantial risk of harm in his custody, and he argues there were reasonable alternatives to removal that would have addressed whatever risk existed. Because the evidence demonstrates that unsupervised contact with mother posed a substantial risk to J.A.'s health and emotional well-being, and that father was unwilling or unable to abide by a juvenile court custody order prohibiting mother

from having unsupervised contact with the child, we conclude substantial evidence supported the removal order.

The purpose of the juvenile dependency laws “is to provide maximum safety and protection for children who are currently . . . being neglected, . . . and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2; see *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215.)

When a minor has been adjudged a dependent child of the court under section 300, the juvenile court may limit the control to be exercised over the dependent child by the parent or guardian. (§ 361, subd. (a).) A dependent child may not be taken from the physical custody of his parent unless the juvenile court finds by clear and convincing evidence that there is a “substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected” without removal. (§ 361, subd. (c)(1).) “ ‘ “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” [Citation.] The court may consider a parent’s past conduct as well as present circumstances.’ ” (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126.)

Our Supreme Court recently clarified the standard for appellate courts to use when reviewing findings—such as the removal findings in this case—that must be proved by clear and convincing evidence. In such cases, “the question before the appellate court is whether the record as a whole contains substantial evidence from which a reasonable fact finder

could have found it highly probable that the fact was true. In conducting its review, the court must view the record in the light most favorable to the prevailing party below and give appropriate deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence.” (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1011–1012 (*O.B.*); see also *In re Jasmon O.* (1994) 8 Cal.4th 398, 423.) The appellant has the burden of showing there is insufficient evidence to support the juvenile court’s findings or orders. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Father argues J.A. “was not afraid of mother,” but he cannot reasonably dispute that mother’s violent behavior posed a substantial risk of harm to J.A.’s physical health and emotional well-being. In his supporting declaration for a domestic violence restraining order, father attested that mother was “constantly out of control,” she had thrown “a glass cup” at J.A. that shattered against a shelf “next to his head,” she had “threaten[ed] to cause bodily injury to [J.A.],” and her persistent outbursts had caused “extreme harm to [J.A.’s] emotional wellbeing.” Father said mother’s violent behavior had been “getting more extreme day by day” and he reiterated that she had been “very violent[,] constantly throw[ing] things[,] breaking thing[s,] and making violent threats.” He declared he needed “help” for his “son[’s] safety.” There plainly was sufficient evidence to find it was “highly probable” that unsupervised contact with mother posed a substantial danger to J.A.’s physical health and emotional well-being. (*O.B.*, *supra*, 9 Cal.5th at p. 1011; § 361, subd. (c)(1).)

Father also admits he “violated the 2013 [juvenile court custody] order by allowing mother to visit [J.A.] at his home.” But the evidence showed his violations were more significant than that. Mother said she frequently stayed at the home when father was recovering from a bicycle accident, and she had slept there the night before the sledgehammer incident. J.A.’s adult sibling, who also lived in the home, reported that mother actually lived in the house with them and she had done so up until the time father filed for a restraining order. Father’s restraining order application confirmed this living arrangement insofar as it sought a “Move-Out Order” against mother. Father admitted mother came to the house whenever she wished because he had failed to establish a schedule for her visits. J.A. said he had severe anxiety attacks when mother came to the house. And the obligation to tell mother she needed to leave frequently fell to J.A., since father and J.A.’s adult sibling were not always home when mother showed up.

The juvenile court reasonably determined J.A.’s physical and emotional well-being could not be protected in father’s custody if father remained unwilling or unable to abide by court orders restricting mother to only supervised contact with J.A. Notwithstanding his admitted violation of the custody order, father contends “there was no evidence [he] would violate such a court order again, particularly with supervision by the court and Department.” The record refutes his contention.

In determining whether a current risk of harm exists, juvenile courts may consider, among other things, “the nature of the conduct and all surrounding circumstances,” “evidence of the parent’s current understanding of and attitude toward the past conduct that endangered a child,” and “participation

in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1025–1026.) “The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances.” (*Id.* at p. 1026.)

The circumstances surrounding the endangering conduct in this case were serious and required swift and meaningful intervention. The Department began supervising father and J.A. after mother threatened J.A. with a sledgehammer while smashing things in the home. According to mother, she had slept at the home the night before, and father had left J.A. alone with her after taking mother’s scooter to go gambling that morning. Despite the seriousness of this incident, a week later, father still had not taken effective action to protect J.A., and mother returned to the home where she was able to have another unsupervised interaction with the child. The incident caused J.A. to have panic attacks and he feared mother would follow through with her threat to burn down the house.

The evidence also suggested father did not take the danger as seriously as the sledgehammer incident required. When he spoke to the Department, father confirmed he was aware of mother’s threats and of the emotional toll the threats had on J.A. He acknowledged mother’s mental health condition, and the risk of harm her erratic and sometimes violent behavior posed to J.A. But as the interview ended, the social worker witnessed mother pulling up to father’s home again—for at least the second time since she threatened J.A. with a sledgehammer—before father waved mother away. Father also authorized J.A.’s school to

release J.A. to mother, again without supervision and in violation of the custody order. In each instance, father attempted to deceive the Department about what had happened. During the next month, J.A. reported mother continued to come around the home, and J.A. had to tell her to leave. Despite mother's frequent visits to the home, father still had not served mother with a restraining order.

Moreover, by the time of the disposition hearing, father still had not participated in education programs and he remained uncooperative in the Department's efforts to ensure J.A.'s safety in his custody. Father frequently failed to respond to the Department's telephone calls and voicemail messages. On more than one occasion he agreed to meet with the Department, only to cancel the meeting at the last minute. Father's sister reported that mother and father "go back and forth with each other" and she described their relationship as "toxic." She believed that mother and father were "codependent" and that father failed to set boundaries with mother. Confirming some of his sister's concerns, father admitted he had let mother come to the house "often" to take care of him, in violation of the custody order, and mother had grown too "comfortable" as a result. But despite his acknowledged inability to set boundaries, at the time of the disposition hearing, father still had not enrolled in individual counseling to address the danger this posed for J.A. And, although he claimed to have enrolled in a parenting class, he offered no evidence at the adjudication hearing or the continued disposition hearing to prove he had actually done so. Father's continuing failure to take comprehensive action to address these underlying issues supported the juvenile court's finding that he could not be trusted to abide by the custody order and to ensure

mother would not have unsupervised contact with J.A. if the child were returned to father's physical custody.

Finally, father argues the court failed to consider J.A.'s own ability as a 14-year-old to protect himself from mother. As the Department points out, relying on a dependent child to protect himself contravenes the purpose of our dependency laws, which is "to provide maximum safety and protection for children who are currently being physically . . . or emotionally abused, . . . and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.) The evidence showed J.A. continued to suffer severe emotional distress because father often left him home alone, where the responsibility fell upon J.A. to tell mother she had to leave the house.

Taken together, the evidence supported the juvenile court's finding that it was "highly probable" that unsupervised contact with mother posed a substantial danger to J.A.'s physical health and emotional well-being, and that no reasonable alternatives to removal existed to ensure J.A.'s emotional well-being in father's custody. (*O.B.*, *supra*, 9 Cal.5th at p. 1011; § 361, subd. (c)(1).)

DISPOSITION

The order is affirmed.

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EGERTON, J.

We concur:

EDMON P. J.

DHANIDINA, J.